



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/927,972
Applicant : Gandy, et al.
Filed : August 10, 2001
TC/A.U. : 2163
Examiner : Linh Black

Confirmation No. 5997


Docket No. : 1904.101
Customer No. : 52529

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on July 10, 2006


Diane Taylor

DECLARATION OF MARK VAN DE CASTEELE
SUBMITTED UNDER 37 CFR § 1.132

Dear Sir:

I, Mark Van De Castele, being duly sworn, on oath depose, state, and declare as follows:

1. I am over the age of 21 and competent to make this Declaration.
2. I reside in the state of Texas.
3. I am and have been the Vice President and Chief Financial Officer of T-Soft, LLC, the general partner of T-System Technologies, Ltd. since May 22, 2002 and am very familiar with the computer template chart product which corresponds to the invention claimed in the subject patent application.

4. The commercial business of T-System Technologies, Ltd. is primarily the development and sale of computer template charts, as recited in Claims 1-37 of the subject application.

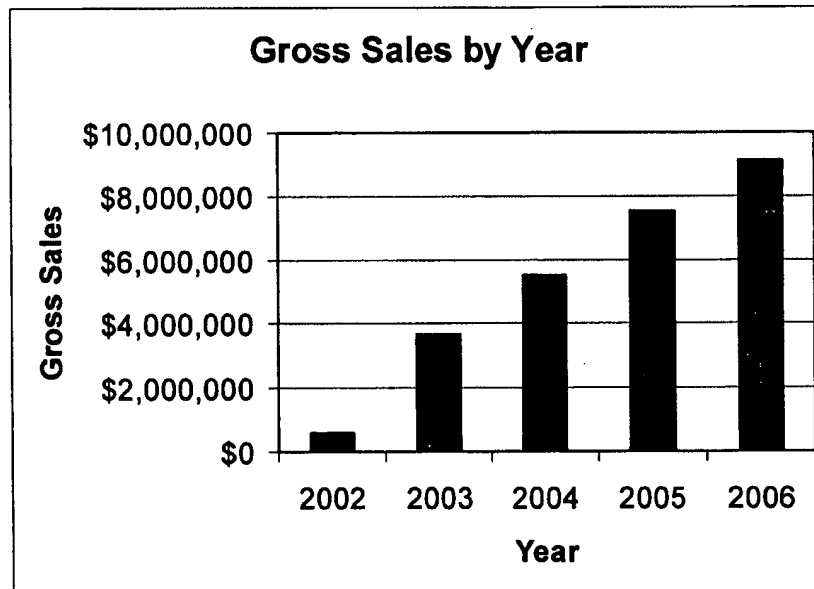
5. The T-System computer template chart product is marketed under the trademark T SYSTEM^{EV}, registered in 2002.

6. The T-System computer template chart product is used by over 98 customers in the United States.

7. The commercial products correspond to the invention described in Claims 1-37 of this patent application. In particular, please note in the following, the similarity between the figures from the subject patent application, the claimed elements, and screen shots of the product marketed:

Patent Application	Claimed Element	Screen Shots of Product
Figs. 7-8	Templates for selection by a user	Exhibits A - B
Figs. 9A-15	Template for abdominal pain with inquiries selectable by user	Exhibits C – G
Fig. 16	Report	Exhibit H
Figs. 17-19	Template and sub-template with modifiers selectable by user	Exhibits I – K
Fig. 20	Report	Exhibit L

8. The template chart product was first introduced commercially to the market in 2002, and since that time, gross sales of the product have, on average, more than doubled every year, as depicted by the following chart (wherein figures for 2006 are projected based on sales through May of 2006):



9. In the four years since the introduction of the template chart product in 2002, T-System's share of the emergency department physician documentation market has increased from zero (in mid-2002) to 27% (in mid-2006), making Applicant's product the most used template charting software in emergency medicine. The remaining market share (63%) is shared by approximately nine other products.

10. There are a number of important features of the T-System template charts that are highly appreciated by users. For example, for a particular case, users may select a template from a list of templates, which selected template includes inquiries for most items for which medical data is needed.

11. Another feature appreciated by users is the ability to "drill down" on selected medical inquiries to sub-templates which provide a number of "modifiers" which may be

associated with the selected medical inquiry to provide additional detail relating to the selected inquiry. When the sub-template is closed, the modifiers remain with the inquiry on the template.

12. A further feature appreciated by users is the ability of the template chart product to readily generate an easily-readable report of the data entered by a user.

13. As a result of the foregoing important features of the subject invention, users are able easily, quickly, and accurately to enter medical data into a computer database, from which reports may readily be automatically generated. Exposure to liability for omissions is also reduced since inquiries needed for most diagnoses are included on the templates.

14. The commercial success of T-System's template charts has not been the result of consumption by purchasers previously "tied" to T-System, as evidenced by the fact that T-System was formed to develop and market the template chart recited in Claims 1-37 of the subject patent application, and consequently, had no customer base prior to the invention which could be said to be "tied" to T-System.

15. Furthermore, commercial success of T-System's template charts was not the result of heavy promotion or advertising, or other business events extraneous to the merits of the invention set forth in the claims. More specifically, there have been no "give-aways" of the product defined by the claims, or any other inducements or concessions in selling the product defined by the claims.

16. Commercial success of T-System's template charts has been the result of the advantageous usability, automated report generation, reduced risk of liability, and economic results attained by the subject matter set forth in the claims of the application, which I have read and understand.

17. In summary, I declare that T-System Technologies, Ltd., whose commercial business is primarily the development and sale of computer template charts as recited in Claims 1-37 of the subject application, is an increasingly successful company. Our business has grown from zero in 2002 to projected gross sales of over \$9,000,000 in 2006, a period of just four years, with a corresponding market share which has grown from zero to approximately 27% in the

same time period. In light of the foregoing, it is my opinion that the T-System template chart may in good faith be accurately regarded as a commercial success, and that this success is solely and directly related to the claimed features of the template charts.

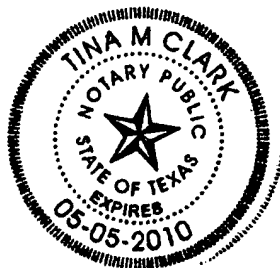
18. I declare that all statements made herein of my own knowledge are true and correct, and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified patent application or any patent issuing thereon.

Signed this 10th day of July, 2006.

Mark Van De Castele
Mark Van De Castele

STATE OF Texas)
)
COUNTY OF Dallas)

SUBSCRIBED AND SWORN to before me, a Notary Public, this 10th day of July, 2006.




Tina Clark
Notary Public

My commission expires on: 5/5/2010

T Choose One Item
X


General
Pediatric

Trauma



- 01 Head Injury
- 02 Eye Problems
- 03 Head Injury, Facial
- 04 Neck/Back Pain or Injury
- 05 Shoulder Injury
- 06 Upper Extremity Injury
- 07 Trunk Injury
- 08 Low Back Pain or Injury
- 09 Hand/Wrist Injury
- 10 Hip Injury
- 11 Lower Extremity Injury
- 12 Ankle/Foot Injury
- 13 Plantar Puncture Wound
- 14 Pediatric Illness
- 15 Pediatric Asthma
- 16 Pediatric Trauma
- 17 MVA
- 17a MCA Bike Pedestrian
- 18 Multiple Trauma
- 19 Fall
- 20 Assault
- 21 Animal Bite
- 22 Major Burn/Smoke Inhalation
- 23 Recheck / Suture Removal
- 24 General
- 25 Critical Care
- 25a CPR

Medicine



- 26 Headache
- 27 Ear Complaints
- 28 Nose
- 29 Throat or Dental Pain
- 30 Cough
- 31 Wheezing / Asthma
- 32 Dyspnea
- 33 Chest Pain
- 34 Palpitations
- 35 Upper Extremity Pain
- 36 Abdominal Pain
- 37 Vomiting / Diarrhea
- 38 GI Bleeding / Rectal Pain
- 39 Female GU
- 40 OB Problems
- 41 Male GU
- 42 Lower Extremity Pain
- 43 Skin Rash / Abscess
- 44 Allergy
- 45 Changed Mental Status
- 46 Focal Neuro Deficit
- 47 Dizzy
- 48 Syncope
- 49 Seizure
- 52 Overdose
- 53 Substance Abuse
- 54 Psych

OK
Cancel

EXHIBIT

A

Blumberg No. 5119

BEST AVAILABLE COPY

Smith, Jack

HOME

Charting

History

Exam

Course

Dx / Dt

View

Clinical

Discharge

Nurse

Coding

Print

Clinical

Instrux/Rx

Closure

Discharge

Lock

Addenda

T Jib



Smith, Jack

HOME



Charting



History



Exam



Course



Dx / Dt

View



Clinical



Discharge



Nurse



Coding

Print



Clinical



Instrux/Rx

Closure



Discharge



Lock



Addenda

T Choose One Item

General Pediatric

Trauma



- | | |
|--------------------------------|------------------------------|
| 01 Head Injury | 26 Headache |
| 02 Eye Problems | 27 Ear Complaints |
| 03 Head Injury, Facial | 28 Nose |
| 04 Neck/Back Pain or Injury | 29 Throat or Dental Pain |
| 05 Shoulder Injury | 30 Cough |
| 06 Upper Extremity Injury | 31 Wheezing / Asthma |
| 07 Trunk Injury | 32 Dyspnea |
| 08 Low Back Pain or Injury | 33 Chest Pain |
| 09 Hand/Wrist Injury | 34 Palpitations |
| 10 Hip Injury | 35 Upper Extremity Pain |
| 11 Lower Extremity Injury | 36 Abdominal Pain |
| 12 Ankle/Foot Injury | 37 Vomiting / Diarrhea |
| 13 Plantar Puncture Wound | 38 GI Bleeding / Rectal Pain |
| 14 Pediatric Illness | 39 Female GU |
| 15 Pediatric Asthma | 40 OB Problems |
| 16 Pediatric Trauma | 41 Male GU |
| 17 MVA | 42 Lower Extremity Pain |
| 17a MCA Bike Pedestrian | 43 Skin Rash / Abscess |
| 18 Multiple Trauma | 44 Allergy |
| 19 Fall | 45 Changed Mental Status |
| 20 Assault | 46 Focal Neuro Deficit |
| 21 Animal Bite | 47 Dizzy |
| 22 Major Burn/Smoke Inhalation | 48 Syncope |
| 23 Recheck / Suture Removal | 49 Seizure |
| 24 General | 52 Overdose |
| 25 Critical Care | 53 Substance Abuse |
| 25a CPR | 54 Psych |

OK Cancel

BEST AVAILABLE COPY

EXHIBIT

B

Blumberg No. 5119

ABDOMINAL PAIN

time: O
 arrived: pvt vehicle EMS context:
 historian: patient EMS family limited by:

O HPI

chief complaint: abdominal pain flank pain
 started: just PTA today last night yesterday

still present gone timing:

quality: location:

"pain" generalized

sharp LUQ L chest

stabbing RUQ epig upper

cramping R abd L abd LLQ

burning RLQ lower peri

dull R flank R pelvic L suprapub

migrating R back L back

... additional abd pain

well localized

diffuse

radiating to:

associated symptoms:

nausea vomiting

loss of appetite diarrhea

severity of pain:

modifying factors: O 1x PTA

similar symptoms previously:

once twice sev times many times occasionally frequently

milder as bad worse varying

recently seen

here another / ED office clinic / hospitalized

O ROS

GI constipation bloody

 black stools vomiting blood

URINARY

 difficulty w/ urination

 pain w/ urination

 frequency

Female pregnant

LNMP:

 missed periods irreg

 abnormal bleeding

 all systems neg, except as marked

CONSTITUTIONAL

 fever chills

Neuro & ENT

 headache

 sore throat

 blurred vision

CVS & Pulmonary

 chest pain

 difficulty breathing

 cough

MS & Skin

 joint pain back pain

 skin rash

O PAST HX

 negative see nurses notes

 peptic ulcer

 gall stones

 bowel obstruction

 kidney stones

 heart dz neuro dz

 lung dz GI dz

 renal dz other dz

 HTN diabetes

 hyperlipidemia

 previous surgery

 abdominal surgery

O MEDS none see nurses notes

O ALLERGIES NKCA see nurses notes

O SOCIAL Hx smoker ETOH drugs

 residence recent travel

O FAMILY Hx gall bladder heart dz hx of

EXHIBIT

C

Blumberg No. 5119

ABDOMINAL PAIN

arrived: pt vehicle EMS context
 history: patient EMS family limited by:

0 HPI

chief complaint: abdominal pain flank pain
 started: just PTA today yesterday

still present gone timing

location: generalized

quality: "pain" sharp stabbing cramping burning dull migrating well localized diffuse

radiating to: additional abd pain

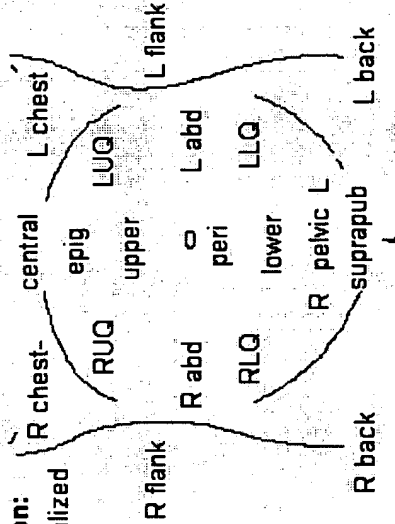
associated symptoms: nausea vomiting loss of appetite diarrhea

severity of pain: O Ix PTA

modifying factors:

similar symptoms previously: once two sev times many times - occasionally frequently milder as bad worse varying

recently seen here another / ED office clinic / hospitalized



0 ROS

GI constipation black stools bloody vomiting blood URINARY difficulty w/ urination pain w/ urination frequency

CONSTITUTIONAL fever chills Neuro & EENT headache sore throat blurred vision CVS & Pulmonary chest pain difficulty breathing cough MS & Skin joint pain back pain skin rash

Female pregnant LNMP missed periods irreg abnormal bleeding all systems neg except as marked

0 PAST Hx

negative see nurses notes peptic ulcer gall stones bowel obstruction kidney stones

heart dz lung dz renal dz other dz HTN diabetes previous surgery abdominal surgery

0 MEDS none see nurses notes

0 ALLERGIES NKDA see nurses notes

0 SOCIAL Hx smoker ETOH drugs residence recent travel

0 FAMILY Hx gall bladder heart dz hx of

EXHIBIT

D

ABDOMINAL PAIN

time:
 arrived: pvt vehicle EMS context:
 historian: patient EMS family limited by:

O HPI

chief complaint: abdominal pain flank pain
 started: just PTA today last night yesterday

still present gone timing

quality: location:

"pain" generalized

sharp RUQ central L chest

stabbing epig LUQ L flank

cramping upper

burning R abd L abd

dull RLQ LLQ

migrating lower

well localized R pelvic L

diffuse suprapub L back

radiating to: additional abd pain

associated symptoms: vomiting

nausea diarrhea

loss of appetite

severity of pain: 0 1x PTA

modifying factors:

similar symptoms previously:

once twice sev times many times - occasionally frequently

milder as bad worse varying

recently seen

here another / ED office clinic / hospitalized

O ROS

GI constipation fever chills

 black stools bloody

 vomiting blood

URINARY

 difficulty w/ urination

 pain w/ urination

 frequency

Female pregnant

LNMP:

 missed periods irreg

 abnormal bleeding

 all systems neg, except as marked

CONSTITUTIONAL

 head ache

 sore throat

 blurred vision

CVS & Pulmonary

 chest pain

 difficulty breathing

 cough

MS & Skin

 joint pain back pain

 skin rash

O PAST HX

 negative see nurses notes

 peptic ulcer

 gall stones

 bowel obstruction

 kidney stones

 heart dz neuro dz

 lung dz GI dz

 renal dz other dz

 HTN diabetes

 hyperlipidemia

 previous surgery

 abdominal surgery

O MEDS none see nurses notes

O ALLERGIES NKCA see nurses notes

O SOCIAL Hx smoker ETOH drugs

 residence recent travel

O FAMILY Hx gall bladder heart dz hx of

EXHIBIT

E

Blumberg No. 5119

ABDOMINAL PAIN

time: O
 arrived: EMS context:
 historian: EMS family limited by:

O HPI

chief complaint: abdominal pain flank pain
 started: just PTA today last night yesterday

still present gone timing:
 location: generalized
 quality: "pain" R chest L chest
 sharp RUQ LUQ
 stabbing upper L flank
 cramping R abd O L abd
 burning RLQ LLQ
 dull lower L back
 migrating R pelvic L
 ... suprapub
 well localized R back
 diffuse L back
 radiating to: additional abd pain

associated symptoms:

nausea vomiting
 loss of appetite diarrhea

severity of pain: O 1x PTA

modifying factors:

similar symptoms previously:
 once twice sev. times many times occasionally frequently
 milder as bad worse varying

recently seen ED office clinic / hospitalized
 here another

O ROS

GI constipation chills
 black stools bloody
 vomiting blood
 URINARY
 difficulty w/ urination
 pain w/ urination
 frequency
 Female pregnant
 LNMP
 missed periods irreg
 abnormal bleeding
 all systems neg. except as marked

CONSTITUTIONAL

 fever chills
 Neuro & EENT
 headache
 sore throat
 blurred vision
 CVS & Pulmonary
 chest pain
 difficulty breathing
 cough
 MS & Skin
 joint pain back pain
 skin rash

O PAST HX

 negative see nurses notes
 peptic ulcer
 gall stones
 bowel obstruction
 kidney stones
 heart dz neuro dz
 lung dz GI dz
 renal dz other dz
 HTN diabetes
 hyperlipidemia
 previous surgery
 abdominal surgery

O MEDS none see nurses notes

O ALLERGIES NKCA see nurses notes

O SOCIAL Hx smoker ETOH drugs
 residence recent travel
 O FAMILY Hx gall bladder heart dz hx of

EXHIBIT

Blumberg No. 5119

ABDOMINAL PAIN

arrived: pvt vehicle EMS
 historian: patient EMS family limited by:

O HPI

chief complaint: abdominal pain flank pain
 started: just PTA today last night yesterday

still present gone location: generalized
 quality: "pain" sharp stabbing cramping burning dull migrating well localized diffuse
 timing: central epig upper LUQ L chest L flank
 RUQ R chest- LUQ L abd LLLQ
 R abd R flank RLQ R pelvic L suprapub L back
 additional abd pain

radiating to: vomiting
 associated symptoms: nausea diarrhea
 loss of appetite

severity of pain: modifying factors: O Ix PTA

similar symptoms previously: once twice sev times many times frequently
 milder as bad worse varying

recently seen here another ED office clinic hospitalized

O ROS

GI constipation black stools bloody vomiting blood
 URINARY difficulty w/ urination pain w/ urination frequency
 CONSTITUTIONAL fever chills
 Neuro & EENT headache sore throat blurred vision
 CVS & Pulmonary chest pain difficulty breathing cough
 MS & Skin joint pain back pain skin rash
 Female pregnant
 LNMP missed periods irreg abnormal bleeding
 all systems neg. except as marked

O PAST HX

negative see nurses notes
 peptic ulcer gall stones
 bowel obstruction kidney stones
 heart dz neuro dz
 lung dz GI dz
 renal dz other dz
 HTN diabetes
 hyperlipidemia
 previous surgery
 abdominal surgery

O MEDS

none see nurses notes
 ALLERGIES NKCA see nurses notes

SOCIAL Hx smoker ETOH drugs
 residence recent travel
 FAMILY Hx gall bladder heart dz hx of

EXHIBIT

6

Blumberg No. 5119

BEST AVAILABLE COPY

Smith, Jack

HOME

Charting

History

Exam

Course

Dx / DI

View

Clinical

Discharge

Nurse

Coding

Print

Clinical

Instrux/Rx

Closure

Discharge

Lock

Addenda

Patient: Smith, Jack

MRN:

VisitID:

46y, M

Physician Clinical Report

Some Hospital Place General

1111 Someplace Rd., Dallas, TX 75244 111-222-3333

Registration Date/Time: 11/28/2005 17:16

*This is a preliminary document and is subject to change

HISTORY OF PRESENT ILLNESS

Chief complaint- ABDOMINAL PAIN. He has had nausea and loss of appetite. No vomiting or diarrhea.

Jim Slagle, M.D.

BEST AVAILABLE COPY

EXHIBIT

H

Blumberg No. 5119

ABDOMINAL PAIN

time: O
 arrived: pvt vehicle EMS context:
 historian: patient EMS family limited by:

O HPI

chief complaint: abdominal pain flank pain
 started: just PTA today last night yesterday

still present gone timing:

location: generalized

quality: "pain"

sharp LUQ L chest L flank
 stabbing RUQ epig upper L abd L back
 cramping R abd peri lower LLQ
 burning RLQ R pelvic L suprapub
 dull R flank R back

radiating to: additional abd pain

associated symptoms: vomiting
nausea diarrhea
loss of appetite

severity of pain: O PTA
 modifying factors:

similar symptoms previously:
 once, twice sev times many times occasionally frequently
 milder as bad worse varying

recently seen ED office clinic / hospitalized
 here another /

O ROS

GI constipation bloody
 black stools vomiting blood
 URINARY difficulty w/ urination
 pain w/ urination frequency
 Female pregnant
 LNMP: missed periods irreg
 abnormal bleeding
 all systems neg. except as marked

CONSTITUTIONAL fever chills
 Neuro & EENT headache
 sore throat blurred vision
 CVS & Pulmonary chest pain
 difficulty breathing
 cough MS & Skin joint pain back pain
 skin rash

O PAST HX

 negative see nurses notes heart dz neuro dz
 peptic ulcer gall stones lung dz GI dz
 bowel obstruction kidney stones renal dz other dz
 HTN diabetes
 hyperlipidemia
 previous surgery
 abdominal surgery

O MEDS none see nurses notes

O ALLERGIES NKCA see nurses notes

O SOCIAL Hx smoker ETOH drugs
 residence recent travel
 O FAMILY Hx gall bladder heart dz hx of O

EXHIBIT

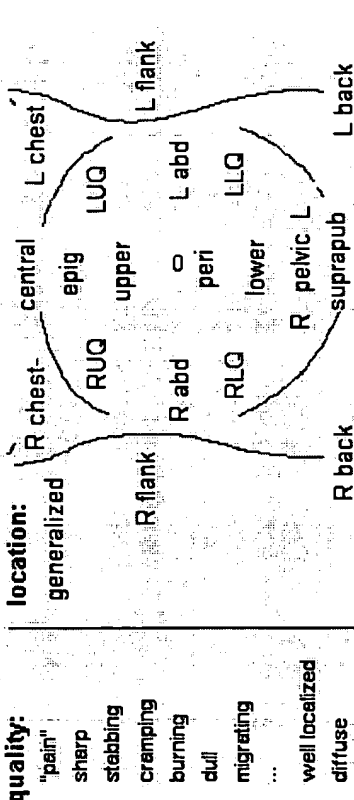
I

ABDOMINAL PAIN

arrived: pvt vehicle EMS
 historian: patient EMS family
 time: _____
 context: _____
 limited by: _____

O HPI

chief complaint: abdominal pain
 started: just PTA today last night yesterday
 still present _____ gone _____ timing: _____



quality: "pain" sharp stabbing cramping burning dull migrating well localized diffuse
 radiating to: _____
 associated symptoms: nausea vomiting loss of appetite diarrhea

severity of pain: _____
 modifying factors: _____

similar symptoms previously: _____
 once twice sev times many times - occasionally frequently
 milder as bad worse varying

recently seen here another / ED office clinic / hospitalized

O ROS

GI constipation _____ bloody _____
 black stools _____
 vomiting blood _____
 URINARY difficulty w/ urination _____
 pain w/ urination _____
 frequency _____
 Female _____ pregnant _____
 LIMP _____
 missed periods _____
 abnormal bleeding _____
 all systems neg. except _____

O PAST HX

negative _____ see nur: _____
 peptic ulcer _____
 gall stones _____
 bowel obstruction _____
 kidney stones _____

COUGH

mild moderate severe
 dry / productive
 scant moderate copious thick thin
 clear yellow green brown white
 blood tinged frank blood
 cough changed from baseline smoker
 sputum changed from baseline
 similar to previous symptoms

O MEDS

none

O ALLERGIES

NK

O SOCIAL Hx

sm residence

O FAMILY Hx

gall bl

BEST AVAILABLE COPY

EXHIBIT

J

Blumberg No. 5119

ABDOMINAL PAIN

arrived: pvt vehicle EMS
 historian: patient EMS family
 time: 0
 context: limited by:

HPI

chief complaint: abdominal pain
 started: just PTA today last night yesterday
 flank pain

still present gone timing:

location: generalized

quality: "pain" sharp stabbing cramping burning dull migrating well localized diffuse

radiating to: additional abd pain

associated symptoms: nausea vomiting diarrhea

loss of appetite

severity of pain: 0 Ix PTA

modifying factors: 0 Ix PTA

similar symptoms previously: once twice sev times many times - occasionally frequently milder as bad worse varying

recently seen here another / ED office clinic / hospitalized

ROS

GI constipation bloody
 black stools
 vomiting blood
 URINARY difficulty w/ urination
 pain w/ urination
 frequency
 Female pregnant
 LIMP missed periods
 abnormal bleeding
 all systems neg except

CONSTITUTIONAL fever chills
 Neuro & EENT headache
 sore throat
 blurred vision
 CVS & Pulmonary chest pain
 difficulty breathing
 cough

PAST HX

negative see nurse
 peptic ulcer
 gall stones
 bowel obstruction
 kidney stones

COUGH

mild moderate severe
 dry / productive
 scant moderate copious thick thin
 clear yellow green brown white
 blood tinged frank blood
 cough changed from baseline smoker
 sputum changed from baseline
 similar to previous symptoms

MEDS

none

ALLERGIES

NK

SOCIAL Hx

sm residence

FAMILY Hx

gall bl

EXHIBIT

K

Smith, Jack

HOME

Charting

History

Exam

Course

Dx / Dt

View

Clinical

Discharge

Nurse

Coding

Print

Clinical

Instrux/Rx

Closure

Discharge

Lack

Addenda

Patient: Smith, Jack
MRN:
VisitID:
 46y, M

Physician Clinical Report
 Some Hospital Place General
 1111 Someplace Rd., Dallas, TX 75244 111-222-3333
 Registration Date/Time: 11/28/2005 17:16

*This is a preliminary document and is subject to change

HISTORY OF PRESENT ILLNESS

Chief complaint- ABDOMINAL PAIN. He has had nausea and loss of appetite. No vomiting or diarrhea.

REVIEW OF SYSTEMS

The patient has had a severe cough productive of thick, green, blood tinged sputum. No frankly bloody sputum.

Jim Slagle, M.D.

BEST AVAILABLE COPY

